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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/373,576	08/13/1999	J.KEITH KELLY	8344-001-27	2727

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EXAMINER

GARG, YOGESH C

ART UNIT PAPER NUMBER

2165

DATE MAILED: 01/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/373,576

Applicant(s)

KELLY ET AL.

Examiner

Yogesh C Garg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 August 1999.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-2, 8-15, and 21-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Gerald et al, (Article by Gerland Jim, and Winer, Mark, " Taking a Spade to the Web, Buffalo News; Buffalo, N.Y.; Apr 7, 1998, pages 2, extracted on Internet on 01/15/2002 from Proquest database. Burpees and National Gardening Association web sites are referred in this article. Copies of home pages of Burpee's web site [www.burpee.com](http://www.burpee.com) as available in, 1996, 1997 and 1998 and copies of Home Page of

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National Garden Association web site [www.garden.org](http://www.garden.org) as available in January 1999 are attached. The two Article pages are marked 1 and 2. Copies of Burpee's web site are marked 3,4,5,6,7 and that of National Garden Association are marked 8, 9, 10, 11 and 12.), hereinafter, referred to as Gerald.

With regards to claims 1-2, 8-15, and 21-25, Gerald teaches a method and a system for identifying material comprising inputting the inquiry on a computer having a storage device for storing database of gardening material, a user input/output device including an Internet browser, a processor connected to storage device and user input/output device to execute the steps of presenting a user with at least one inquiry via input device and identifying at least one gardening material based upon the inquiry, and offering the user the opportunity to purchase at least one gardening material (See Pages marked 1 and 2. As disclosed in Gerald, Burpee and National Gardening Association have web sites to interact with users, all above mentioned limitations are inherent in Gerald). Gerald further discloses offering the user the opportunity to purchase at least one gardening material (see page marked 6, "...*Online Ordering*..."). Gerald also teaches directing at least one enquiry towards the user's state or region of the country (See page marked 10, "...*Gardening Information For Your Region*.....*Select a region*...").

Gerald further presents the user with at least one inquiry directed towards the symptoms of a problem observed by the user and then identifying a pest based upon the user's inquiry and selecting gardening material from the group consisting of

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pesticides, fertilizers and seeds (See page marked 1, paragraph 5, "*....We found lots of good Web sites.....gardening tips ranging from dealing with garden pests....or growing better tomatoes ...*", page marked 2, 1<sup>st</sup> paragraph, "*...www.burpee.com, where .....submit questions to be answered by Charlie Nardozzi, senior horticulturist.....*", page marked 2, paragraph 4, "*..From its home page.....offered tips about defending ....from unwanted pests.....and even tips on keeping your dogs and cats pest-free...*" and page marked 8, "*.. Welcome to the Burpee Question & Answer Page.....tap on the expert knowledge of the National Gardening Association and Burpee.....have a gardening question....type it and we'll dig it for you.....search the Question & Answer Library.....*". Note: it will be inherent to identify a pest corresponding to the user's responses to the enquiry from the group consisting of: insects, fungi, nematodes, snails, slugs, weeds and diseases and also to select a gardening material from the group consisting pesticides, fertilizers and seeds to growing better tomatoes or create a successful garden.). Gerald also discloses displaying a list of retailers or dealers from which the gardening material is available ( See page marked 11, "*..Buyers Guide 1999.....The new 1999 Buyers Guide gives you easy to use hyperlinks to garden company Websites and fast e-mail forms.....*").

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerald.

With regards to 3 method claim and 16 system claim, Gerald teaches a method and system for identifying a gardening material as disclosed above in method claim 1 and system claim 13 respectively. In Gerald both Burpee and National Garden Association web sites do not disclose displaying a label associated with the gardening material to the user. Official Notice is taken of both the notoriously well-known concept and benefits of displaying a label associated with the gardening material to the user in Gerald. It would have been obvious to a person of an ordinary skill in the art at the time of the invention to include the concept of displaying a label associated with the gardening material to the user in Gerald because it is universally known that gardening material contains hazardous materials in the form of pesticides and fertilizers and it is mandatory to display directions for use, caution users against

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incorrect use of the contents, display safety measures on the exterior of the packages to eliminate the risk of any accident that can take place.

5. Claims 4-7 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerald in view of Sturgeon et al. (US Patent number 5,726,884), hereinafter, referred to as Sturgeon.

With regards to 4-7 method claims and 17-20 system claims, Gerald teaches a method and system for identifying a gardening material as disclosed above in method claim 3 and system claim 16. In Gerald, National Gardening Association site further discloses that the inquiry is directed towards the user's region in the country (See page marked 10, "...*Gardening Information For Your Region.....Select a region....*"). Further, while analyzing the limitations of claims 3 and 16 above that label is a material safety data sheet and should be applied to the gardening material for retail sales were rendered obvious.

In Gerald, both Burpee and National Gardening Association Web sites do not disclose that at least one enquiry is directed towards the user's state, and label varies depending upon the user's state. However, Sturgeon teaches that label varies depending upon the user's state and enquiry is directed toward's the user state (col.1, line 5-col.2, line 49, specially lines 7-12, "...*This invention relates to....regulatory, review of.....use, handle, and/or transport of chemical products.....considered hazardous to humans.....*", and col.2, lines 1-6, "...*These laws often have overlapping*

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*jurisdiction and are not always consistent with one another.....Several states..have passed their own hazardous substance laws.....These laws still apply in those states and in many cases supersede their Federal counterparts..".* Note: Sturgeon teaches that state laws differ for hazardous materials and therefore it will be mandatory to know the state to follow the laws of that state while using, handling or transporting hazardous materials like gardening materials, which include pesticides and fertilizers).

It would have been obvious to a person of an ordinary skill in the art at the time of the invention to include the feature that at least one enquiry is directed towards the user's state, and label to vary depending upon the user's state because states have different laws with regards to use, handling and transport of hazardous materials (as suggested in Sturgeon, col.2, lines 1-6) and knowing the state would enable the suppliers to supply hazardous materials like gardening materials including pesticides and fertilizers with labels displaying safety, caution and warning data in conformity with the laws of the state where the material is to be used.

### **Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- (i) Whiteflower.com, <http://www.whiteflower.com>, refer to the history, web-



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pages enclosed. This site has been active since Feb 06, 1998 as per the search history from waybackmachine, copy enclosed. Whiteflower.com site can be used to show that it anticipates claims 1-2, 8-15 and 21-25 and renders obvious the claims 3-7, and 16-20 in view of Sturgeon.

(ii) Anonymous, " Gardening ", NEA Today; Washington; Apr 1998, Vol.16, Issue: 8, extracted from Internet from Proquest database on 01/16/2002. This article discloses that National Garden Association offers a wide range of materials through its home Web site at [www2.garden.org/nga/](http://www2.garden.org/nga/).

(iii) Santelmann, " Or, you could blast them with raid ", Forbes; New York; Spring 1998, Supplement: FYI-The Good Life: Travel Issue, extracted from Internet from Proquest database on 01/16/2002. The article teaches that at National Gardening Association's web site [www.garden.org](http://www.garden.org) horticulturist Charlie Nardoizzi answers questions, relating to gardening, pests, insects, etc., from the users.

(iv) US Patent number 6,064,979 to Perkowski, "Method Of And System For Finding And Serving Consumer Product Related Information Over The Internet Using Manufacturer Identification Numbers ". A primary object of the present invention is to provide a novel system and method for finding product and service related information on the Internet, while avoiding the shortcomings and drawbacks of prior art systems and methodologies.

(v) US Patent number 5,974,388 to Durham, " Paint Customer Service Information Method And Apparatus ". An apparatus for providing paint product related information to customers and recording customer telephone calls includes work stations (10, 23)

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having a memory device (18) storing a plurality of paint product information and a plurality of customer information, an input device (12) for generating a customer request for information signal related to a selected one of the paint products, a display device (14) for visually displaying information and graphic displays in response to display signals, a computer (13) responsive to the customer request for information signal for selecting from the customer information caller information related to a customer associated with the customer request and generating a first display signal to the display device (14) to visually display a call log graphic display (43) including the caller information (44), and being responsive to the customer request for information signal for selecting a portion of the paint product information related to advice to be given to the customer and generating a second display signal to visually display (58, 88) the selected portion of the paint product information on said display device (14) and a modem (16) connected between the computer (13) and a telephone system (17) for sending the selected portion of the paint product information to the customer (abstract). The method of operation of this invention is similar to the claims in the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C Garg whose telephone number is 703-306-0252. The examiner can normally be reached on M-F (8:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W Coggins can be reached on 703-308-1344. The fax phone


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numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Yogesh C Garg  
Examiner  
Art Unit 2165

YCG  
January 23, 2002

  
WYNN COGGINS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100



**UNITED STATES DEPARTMENT OF COMMERCE**  
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A PTO-wide customer service standard is if a PTO employee being called is not available, they will return your call by the next business day, or, if you request, an alternate point of contact will be provided. Technology Center 2100 is committed to meeting this service standard. If you have called any employee in our Technology Center and have not received a return phone call within one (1) business day or have not been provided another point of contact, please contact the Technology Center at 703-306-5631. We ensure that you will receive a return phone call, from an employee with the ability to assist you, within four (4) business hours of this contact. We appreciate your help in assisting us to help you.